

Aug 12, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMIE M.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 1:18-cv-03203-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 14, 15

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 14, 15. The parties consented to proceed before a magistrate judge. ECF No.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names.

² Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant and directs the Clerk to update the docket sheet. *See* Fed. R. Civ. P. 25(d).

1 6. The Court, having reviewed the administrative record and the parties' briefing,
2 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
3 motion, ECF No. 14, and grants Defendant's motion, ECF No. 15.

4 **JURISDICTION**

5 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

6 **STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
9 limited; the Commissioner's decision will be disturbed "only if it is not supported
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
13 (quotation and citation omitted). Stated differently, substantial evidence equates to
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
15 citation omitted). In determining whether the standard has been satisfied, a
16 reviewing court must consider the entire record as a whole rather than searching
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

9 **FIVE-STEP EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered "disabled" within
11 the meaning of the Social Security Act. First, the claimant must be "unable to
12 engage in any substantial gainful activity by reason of any medically determinable
13 physical or mental impairment which can be expected to result in death or which
14 has lasted or can be expected to last for a continuous period of not less than twelve
15 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be
16 "of such severity that he is not only unable to do his previous work[,] but cannot,
17 considering his age, education, and work experience, engage in any other kind of
18 substantial gainful work which exists in the national economy." 42 U.S.C. §
19 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
3 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work
4 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial
5 gainful activity," the Commissioner must find that the claimant is not disabled. 20
6 C.F.R. § 416.920(b).

7 If the claimant is not engaged in substantial gainful activity, the analysis
8 proceeds to step two. At this step, the Commissioner considers the severity of the
9 claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
10 "any impairment or combination of impairments which significantly limits [his or
11 her] physical or mental ability to do basic work activities," the analysis proceeds to
12 step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy
13 this severity threshold, however, the Commissioner must find that the claimant is
14 not disabled. 20 C.F.R. § 416.920(c).

15 At step three, the Commissioner compares the claimant's impairment to
16 severe impairments recognized by the Commissioner to be so severe as to preclude
17 a person from engaging in substantial gainful activity. 20 C.F.R. §
18 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
19 enumerated impairments, the Commissioner must find the claimant disabled and
20 award benefits. 20 C.F.R. § 416.920(d).

1 If the severity of the claimant's impairment does not meet or exceed the
2 severity of the enumerated impairments, the Commissioner must pause to assess
3 the claimant's "residual functional capacity." Residual functional capacity (RFC),
4 defined generally as the claimant's ability to perform physical and mental work
5 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
6 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

7 At step four, the Commissioner considers whether, in view of the claimant's
8 RFC, the claimant is capable of performing work that he or she has performed in
9 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
10 capable of performing past relevant work, the Commissioner must find that the
11 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
12 performing such work, the analysis proceeds to step five.

13 At step five, the Commissioner considers whether, in view of the claimant's
14 RFC, the claimant is capable of performing other work in the national economy.
15 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
16 must also consider vocational factors such as the claimant's age, education and
17 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of
18 adjusting to other work, the Commissioner must find that the claimant is not
19 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to
20

1 other work, analysis concludes with a finding that the claimant is disabled and is
2 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

3 The claimant bears the burden of proof at steps one through four above.
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
5 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
6 capable of performing other work; and (2) such work “exists in significant
7 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
8 700 F.3d 386, 389 (9th Cir. 2012).

9 **ALJ’S FINDINGS**

10 On May 3, 2012, Plaintiff applied for Title XVI supplemental security
11 income benefits alleging an amended disability onset date of October 1, 2011. Tr.
12 160-65. The application was denied initially, Tr. 92-100, and on reconsideration,
13 Tr. 104-11. Plaintiff appeared before an administrative law judge (ALJ) on August
14 1, 2013. Tr. 29-59. On December 30, 2013, the ALJ denied Plaintiff’s claim. Tr.
15 9-28. On appeal, this Court remanded the case to the Social Security
16 Administration and instructed the ALJ to consider Mr. Conley’s opinion as to
17 functional limitations, which was submitted after the ALJ issued her decision,
18 address Dr. Dougherty’s diagnoses of major depressive disorder, PTSD, and
19 obsessive compulsive traits, and clarify the ALJ’s consideration of ARNP
20 Fusfield’s opinion and the weight she accorded it. Tr. 675-96. While her appeal

1 was pending, Plaintiff filed a subsequent Title XVI application for supplemental
2 security income benefits on June 1, 2015. Tr. 702-03. Plaintiff's claim was
3 granted on initial determination, with an established onset date of April 6, 2015.
4 *Id.*

5 On November 29, 2017, Plaintiff appeared before the same ALJ for a second
6 hearing. Tr. 630-47. On August 15, 2018, the ALJ denied Plaintiff's claim. Tr.
7 592-620. At step one of the sequential evaluation process, the ALJ found Plaintiff
8 had not engaged in substantial gainful activity from May 3, 2012, the application
9 date, to April 6, 2015, the established onset date. Tr. 597. At step two, the ALJ
10 found that Plaintiff had the following severe impairments prior to April 6, 2015:
11 degenerative changes of the cervical, thoracic, and lumbar spine; affective disorder
12 (depressive disorder); anxiety-related disorder; and personality disorder. Tr. 597-
13 98.

14 At step three, the ALJ found that prior to April 6, 2015, Plaintiff did not
15 have an impairment or combination of impairments that met or medically equaled
16 the severity of a listed impairment. Tr. 599-600. The ALJ then concluded that
17 Plaintiff had the RFC to perform light work with the following limitations:

18 [Plaintiff] could lift up to 20 pounds occasionally and lift/carry up to
19 10 pounds frequently, stand/walk for 6 hours in an 8-hour workday,
and sit for 6 hours in an 8-hour workday, with normal breaks.
20 [Plaintiff] could frequently climb ramps or stairs and occasionally
climb ladders, ropes, or scaffolds. [Plaintiff] could frequently balance
and stoop. [Plaintiff] needed to avoid concentrated exposure to

1 excessive vibration and workplace hazards (such as unprotected
2 machinery and unprotected heights). [Plaintiff] was able to perform
3 unskilled or semi-skilled work and well-learned tasks. [Plaintiff]
4 could have superficial interaction with coworkers and the public.

5 Tr. 600-01.

6 At step four, the ALJ found Plaintiff was unable to perform any past relevant
7 work. Tr. 611. At step five, the ALJ found that, considering Plaintiff's age,
8 education, work experience, RFC, and testimony from the vocational expert, there
9 were jobs that existed in significant numbers in the national economy that Plaintiff
10 could perform, such as cashier II, cleaner housekeeper, and assembler. Tr. 612.

11 Therefore, the ALJ concluded that Plaintiff was not under a disability, as defined in
12 the Social Security Act, from May 3, 2012, the application date, through April 6,
13 2015, the established onset date. Tr. 613.

14 The Appeals Council did not assume jurisdiction of the case, making the
15 ALJ's decision the Commissioner's final decision for purposes of judicial review.
16 *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. § 416.1484.

17 ISSUES

18 Plaintiff seeks judicial review of the Commissioner's final decision denying
19 her supplemental security income benefits under Title XVI of the Social Security
20 Act. Plaintiff raises the following issues for review:

1. Whether the ALJ properly evaluated Plaintiff's symptom claims;
2. Whether the ALJ properly evaluated the medical opinion evidence; and

3. Whether the ALJ conducted a proper step-five analysis.

ECF No. 14 at 9-10.

DISCUSSION

A. Plaintiff's Symptom Claims

Plaintiff faults the ALJ for failing to rely on clear and convincing reasons in discrediting her subjective symptom claims. ECF No. 14 at 17-19. An ALJ engages in a two-step analysis to determine whether to discount a claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted). "The claimant is not required to show that [the claimant's] impairment could reasonably be expected to cause the severity of the symptom [the claimant] has alleged; [the claimant] need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

Second, “[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant’s testimony about the severity of the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations omitted). General findings are insufficient; rather, the ALJ must identify what

1 symptom claims are being discounted and what evidence undermines these claims.
2 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
3 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
4 explain why it discounted claimant’s symptom claims). “The clear and convincing
5 [evidence] standard is the most demanding required in Social Security cases.”
6 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
7 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

8 Factors to be considered in evaluating the intensity, persistence, and limiting
9 effects of an individual’s symptoms include: 1) daily activities; 2) the location,
10 duration, frequency, and intensity of pain or other symptoms; 3) factors that
11 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
12 side effects of any medication an individual takes or has taken to alleviate pain or
13 other symptoms; 5) treatment, other than medication, an individual receives or has
14 received for relief of pain or other symptoms; 6) any measures other than treatment
15 an individual uses or has used to relieve pain or other symptoms; and 7) any other
16 factors concerning an individual’s functional limitations and restrictions due to
17 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §
18 416.929 (c). The ALJ is instructed to “consider all of the evidence in an
19 individual’s record,” “to determine how symptoms limit ability to perform work-
20 related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

1 The ALJ found that Plaintiff's medically determinable impairments could
2 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
3 statements concerning the intensity, persistence, and limiting effects of her
4 symptoms were not entirely consistent with the evidence. Tr. 601. Plaintiff
5 inaccurately contends the ALJ identified only three reasons to support her
6 conclusion: (1) Plaintiff's allegations were out of proportion to physical
7 examinations; (2) Plaintiff was not fully compliant with treatment; and (3) there
8 were inconsistencies in Plaintiff's reports. ECF No. 14 at 18. However, the ALJ
9 cited additional reasons for discounting Plaintiff's symptom claims, which Plaintiff
10 did not challenge. Tr. 602, 604-06.

11 *1. Inconsistent with Objective Medical Evidence*

12 The ALJ found that Plaintiff's physical and mental symptom complaints
13 were not supported by the medical evidence. Tr. 601-02. An ALJ may not
14 discredit a claimant's symptom testimony and deny benefits solely because the
15 degree of the symptoms alleged is not supported by objective medical evidence.
16 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947
17 F.2d 341, 345 (9th Cir. 1991). However, the medical evidence is a relevant factor
18 in determining the severity of a claimant's pain and its disabling effects. *Rollins*,
19 261 F.3d at 857; 20 C.F.R. § 416.929(c)(2). Minimal objective evidence is a factor
20

1 which may be relied upon to discount a claimant's testimony, although it may not
2 be the only factor. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005).

3 a. Physical Impairments

4 The ALJ found Plaintiff's testimony that she was unable to work due to
5 debilitating back pain which caused her to be unable to sit or stand for any length
6 of time was inconsistent with the medical evidence in the record. Tr. 40-42, 179,
7 601-02; *see, e.g.*, Tr. 505, 1150 (June 2012 and November 2014: imaging studies
8 prior to April 2015 demonstrated only mild degenerative changes at L4-5 and L5-
9 S1 and degenerative changes of the thoracic spine); Tr. 1053 (February 2015:
10 Plaintiff had degenerative changes in the cervical spine prior to April 2015, but a
11 neurosurgeon who reviewed an MRI of Plaintiff's cervical spine reported the
12 results as showing "some very typical middle-aged spondylitic changes, nothing
13 severe at all," "no severe foraminal compromise, only some very modest foraminal
14 narrowing at C5-6," and no objective evidence of cervical radiculopathy); Tr. 525
15 (January 2013: physician's treatment notes reported "[Plaintiff's] physical
16 examination with regards to her cervical spine is essentially normal."). The ALJ
17 also determined that Plaintiff's allegations were out of proportion to physical
18 examinations prior to April 2015, which regularly revealed normal gait and station,
19 Tr. 528, 530, 1094, as well as 5/5 motor strength, normal range of motion, normal
20 reflexes, normal coordination, and normal sensation in the legs, Tr. 530, 544, 1165,

1 1169, 1173, 1177, 1185, 1189, 1193, 1196. Tr. 601. The ALJ noted that, despite
2 Plaintiff's description of constant severe spinal pain, providers often observed that
3 she was in no acute distress prior to April 2015. Tr. 604; *see e.g.*, Tr. 1169, 1173,
4 1177, 1185, 1189, 1193, 1196, 1233, 1242, 1247.

5 The ALJ determined that Plaintiff's allegations that she was unable to work
6 due to constant neck pain that radiated down her arms were not corroborated by the
7 record. Tr. 40, 42-43, 179, 602; *see, e.g.*, Tr. 519-20 (November 2012: nerve
8 conduction study revealed only a mild abnormality of the left upper extremity that
9 likely stemmed from a remote injury at C5-6, not from the motor vehicle accident
10 in October 2011); Tr. 533 (November 2012: Plaintiff's EMG was negative for
11 acute/chronic denervation, median/ulnar neuropathy, and acute/chronic
12 radiculopathy in the upper extremities); Tr. 1236 (March and July 2013: physical
13 examination finding showed normal range of motion of the neck, Tr. 544, 1236, as
14 well as intact motor, sensory, and reflex function of the bilateral upper extremities,
15 Tr. 528, 530, 544). The ALJ also observed that a physical examination in February
16 2015, a few months prior to the established onset date, was negative for atrophy.
17 Tr. 602 (citing Tr. 1053).

18 b. Mental Impairments

19 The ALJ determined that Plaintiff's allegations of severe mental dysfunction
20 were inconsistent with treatment notes that showed Plaintiff had intact memory,

1 cognition, attention, alertness/orientation, and fund of knowledge prior to April
2 2015. Tr. 603 (citing Tr. 530, 533, 1094, 1129, 1241). The ALJ found that,
3 despite Plaintiff's description of constant severe depression and anxiety, providers
4 often observed that she was cooperative and pleasant during appointments prior to
5 April 2015. *See, e.g.*, Tr. 528, 532-33 (pleasant and cooperative with
6 examination); Tr. 1169, 1173, 1177, 1185, 1189, 1193, 1196 (cooperative, not in
7 acute distress, oriented to time, place, purpose, and person, grossly intact neuro
8 exam); Tr. 1233, 1237, 1242 (cooperative and pleasant, not in acute distress); Tr.
9 1236 (cooperative, talkative). Plaintiff argues there was a "noteworthy amount of
10 objective evidence" that supported her allegations and the ALJ erroneously failed
11 to take this evidence into consideration. ECF No. 16 at 8. It is the ALJ's
12 responsibility to resolve conflicts in the medical evidence. *Andrews v. Shalala*, 53
13 F.3d 1035, 1039 (9th Cir. 1995). Where the ALJ's interpretation of the record is
14 reasonable as it is here, it should not be second-guessed. *Rollins*, 261 F.3d at 857.
15 The Court must consider the ALJ's decision in the context of "the entire record as
16 a whole," and if the "evidence is susceptible to more than one rational
17 interpretation, the ALJ's decision should be upheld." *Ryan v. Comm'r of Soc. Sec.*,
18 528 F.3d 1194, 1198 (9th Cir. 2008) (internal quotation marks omitted). Here, the
19 ALJ reasonably concluded, based on this record, that the objective medical
20 evidence did not support the level of physical or mental impairments alleged by

1 Plaintiff. Tr. 603. The ALJ's finding is supported by substantial evidence and was
2 a clear and convincing reason, in conjunction with the other identified reasons, *see*
3 *infra*, to discount Plaintiff's symptom complaints.

4 2. Exaggeration

5 The ALJ found Plaintiff's physical and mental symptom claims were
6 undermined by evidence of Plaintiff's symptom magnification. Tr. 604-05. The
7 ALJ may appropriately consider a claimant's tendency to exaggerate. *See*
8 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001) (the ALJ appropriately
9 considered Plaintiff's tendency to exaggerate when assessing Plaintiff's credibility,
10 which was shown in a doctor's observation that Plaintiff was uncooperative during
11 cognitive testing but was "much better" when giving reasons for being unable to
12 work.). Plaintiff does not challenge this finding, and thus waives any argument as
13 to symptom exaggeration. *See Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d
14 1155, 1161 n.2 (9th Cir. 2008) (determining Court may decline to address on the
15 merits issues not argued with specificity); *Kim v. Kang*, 154 F.3d 996, 1000 (9th
16 Cir. 1998) (the Court may not consider on appeal issues not "specifically and
17 distinctly argued" in the party's opening brief). Despite Plaintiff's waiver, the
18 Court conducted an independent review of the ALJ's decision and finds the ALJ's
19 opinion is supported by substantial evidence in the record. The ALJ cited
20 numerous examples of Plaintiff's symptom magnification. Tr. 605-06; *see, e.g.*,

Tr. 414 (June 2012: Dr. Dougherty diagnosed rule-out symptom exaggeration); Tr. 65, 82) (after reviewing Dr. Dougherty’s evaluation, Dr. Gilbert and Dr. Underwood noted Plaintiff gave out on mental status tasks, and opined that such results were indicative of suboptimal effort and symptom exaggeration); Tr. 524, 528 (January and March 2013: upon examination, Dr. Allen noted that Plaintiff sat with her head held forward and shoulders rounded forward, which exaggerated her upper kyphotic posture, she exhibited purposeful motion on tandem gait, and giveaway weakness on manual muscle testing); Tr. 528 (March 2013: Plaintiff showed giveaway weakness in all four extremities); Tr. 530 (March 2013: Dr. Condefer reported that Plaintiff presented as “diffusely weak,” and that this was “out of proportion to her degree of functioning, i.e., gives 4-/5 in both legs but able to easily stand from chair and walk”); Tr. 1053 (February 2015: upon examination, Dr. Nussbaum reported that Plaintiff “does not make any effort on any sort of manual muscle testing” and she showed evidence of giveaway weakness). On this record, the ALJ reasonably concluded that Plaintiff exaggerated her symptoms. This finding is supported by substantial evidence and was a clear and convincing reason to discount Plaintiff’s symptom complaints.

3. Inconsistent Statements

The ALJ also found Plaintiff’s allegations that she could not work due to her physical and mental impairments were undermined by Plaintiff’s inconsistent

1 reports throughout the record. Tr. 605-06. In evaluating a claimant's symptom
2 claims, an ALJ may consider the consistency of an individual's own statements
3 made in connection with the disability review process with any other existing
4 statements or conduct under other circumstances. *Smolen v. Chater*, 80 F.3d 1273,
5 1284 (9th Cir. 1996) (The ALJ may consider "ordinary techniques of credibility
6 evaluation," such as reputation for lying, prior inconsistent statements concerning
7 symptoms, and other testimony that "appears less than candid."). Plaintiff argues
8 that the inconsistencies in her reports constitute evidence of her memory problems
9 and emotional issues. ECF No. 16 at 8. The ALJ cited numerous examples in the
10 record of Plaintiff's inconsistent statements. Tr. 605-06; *see, e.g.*, Tr. 179, 861,
11 863 (Plaintiff alleged disability since October 1, 2010, but in February and July
12 2011, in an effort to obtain unemployment benefits, Plaintiff asserted under penalty
13 of perjury that there was no reason she could not "seek or accept full-time work" at
14 that time); Tr. 179, 857, 859 (Plaintiff alleged that her last job ended in October
15 2010 because she was let go due to her depression, Tr. 179, however, she attested
16 to the state of Washington that she stopped working in October 2010 due lack of
17 work, Tr. 857, and contrary to both of these reports, her employer at the time
18 revealed that she was let go due to unsatisfactory job performance during the
19 probationary period, Tr. 859); Tr. 195-202 (June 2012: Despite Plaintiff's
20 allegations of disabling mental impairments, Plaintiff's friend provided a third-

1 party function report and did not indicate that Plaintiff had any problems with
2 mental symptoms); Tr. 65, 82 (Dr. Gilbert and Dr. Underwood noted that Plaintiff
3 complained of psychological symptoms to Dr. Dougherty that were inconsistent
4 with her earlier statements on a function report); Tr. 522, 290 (In January 2013,
5 Plaintiff told Dr. Allen that she was involved in a motor vehicle accident in
6 October 2011 and she was left unconscious and significantly disoriented after the
7 accident, Tr. 522, but contemporaneous emergency records at the time of the
8 accident show that she never had loss of consciousness and she was discharged in
9 stable condition, without any symptoms that were life threatening, Tr. 290); Tr. 49-
10 50, 508 (At the August 2013 hearing, Plaintiff testified that she did not drive
11 anymore, Tr. 49-50, but her testimony was inconsistent with her disclosure two
12 months earlier that she drove her daughter to school, Tr. 508): Tr. 508 (In a July
13 2013 evaluation, Plaintiff reported that she left her home only once per week, but
14 Plaintiff later contradicted this statement when she reported taking her daughter to
15 school each day); Tr. 47, 198 (Plaintiff testified at the August 2013 hearing that
16 she never went anywhere alone, Tr. 47, but her testimony contradicted her friend's
17 report that she could go out alone, Tr. 198); Tr. 43 (At the August 2013 hearing,
18 Plaintiff testified that she experienced dizziness and falls, but medical records prior
19 to April 2015 did not document any chronic issues with dizziness or falls); Tr. 41,
20 43 (At the August 2013 hearing, Plaintiff testified that she required the use of a

1 cane when she was not with her daughter, but medical records documented no
2 prescriptions for a cane and did not mention the use of an assistive device during
3 appointments, however providers regularly observed that Plaintiff had a normal
4 gait); Tr. 34, 43, 49, 1067, 1118 (Plaintiff testified at the August 2013 hearing that
5 she was dependent on her 14-year old daughter to take care of her, Tr. 34, 43, but
6 the ALJ noted her testimony appeared somewhat implausible because Plaintiff also
7 testified that her daughter had been in rehab for drug abuse, Tr. 49, 1067, and
8 subsequent records in 2014 indicated that her daughter had become pregnant and
9 was in and out of jail, Tr. 1118). On this record, that Plaintiff offered inconsistent
10 statements as to her symptom complaints, is a clear and convincing reason,
11 supported by substantial evidence, to discount Plaintiff's reported physical and
12 mental symptoms.

13 *4. Inconsistent with Activities*

14 The ALJ found that Plaintiff's activities were inconsistent with the level of
15 physical and mental impairment Plaintiff alleged. Tr. 602. An ALJ may consider
16 a claimant's activities that undermine reported symptoms. *Rollins*, 261 F.3d at
17 857. If a claimant can spend a substantial part of the day engaged in pursuits
18 involving the performance of exertional or nonexertional functions, the ALJ may
19 find these activities inconsistent with the reported disabling symptoms. *Fair v.*
20 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Molina*, 674 F.3d at 1113. "While a

1 claimant need not vegetate in a dark room in order to be eligible for benefits, the
2 ALJ may discount a claimant's symptom claims when the claimant reports
3 participation in everyday activities indicating capacities that are transferable to a
4 work setting" or when activities "contradict claims of a totally debilitating
5 impairment." *Molina*, 674 F.3d at 1112-13. Plaintiff failed to challenge this
6 finding in her opening brief, so argument on this issue is waived. *See Carmickle*,
7 533 F.3d at 1161 n.2; *Kim*, 154 F.3d at 1000. Despite Plaintiff's waiver, the Court
8 conducted an independent review of the ALJ's decision and finds the ALJ's
9 opinion is supported by substantial evidence in the record.

10 The ALJ indicated that Plaintiff reported she was unable to work due to her
11 disabling back pain. Tr. 40-42, 179, 602. However, the ALJ noted that Plaintiff's
12 allegations of constant stabbing back pain were inconsistent with her ability to
13 travel to and from Lebanon alone, an activity that required her to sit on an airplane
14 for multiple hours at a time. Tr. 42, 508, 602. The ALJ noted that Plaintiff also
15 reported she was unable to work due to her severe mental impairments. Tr. 44-47,
16 179, 602-03. However, the ALJ found that Plaintiff's allegations of severe mental
17 impairments were also inconsistent with her activities, which included obtaining a
18 3.3 grade point average from online college classes, Tr. 41, and being a single
19 parent to two teenage children, Tr. 34, one of whom was struggling with both legal
20 and substance abuse issues, Tr. 1067, 1118. The ALJ's finding that Plaintiff's

1 activities were inconsistent with her specific alleged limitations is supported by
2 substantial evidence.

3 5. *Drug Seeking Behavior*

4 The ALJ also discounted Plaintiff's symptom claims because she found that
5 the record suggested Plaintiff engaged in possible drug-seeking behavior. Tr. 602.
6 Drug-seeking behavior and conflicting inconsistent statements about drug use are
7 appropriate grounds for the ALJ to discount a claimant's reported symptoms.

8 *Thomas*, 278 F.3d at 959; *Edlund*, 253 F.3d at 1157; *Gray v. Comm'r, of Soc. Sec.*,
9 365 Fed. App'x. 60, 63 (9th Cir. 2010); *Lewis v. Astrue*, 238 Fed. App'x. 300, 302
10 (9th Cir. 2007); *Morton v. Astrue*, 232 Fed. App'x. 718, 719 (9th Cir. 2007).

11 Plaintiff failed to challenge this finding in her opening brief, so argument on this
12 issue is waived. *See Carmickle*, 533 F.3d at 1161 n.2; *Kim*, 154 F.3d at 1000.

13 Despite Plaintiff's waiver, the Court conducted an independent review of the
14 ALJ's decision and finds the ALJ's opinion is not supported by substantial
15 evidence in the record.

16 The ALJ based this finding on a notation by ARNP Fusfield in one treatment
17 note. Tr. 602-03 (citing Tr. 1235). The ALJ noted that during an appointment in
18 March 2013, ARNP Fusfield read Plaintiff a report which recommended she not be
19 given opioids. Tr. 1235. ARNP Fusfield noted that she had not given Plaintiff any
20 opioids since October 2012. Tr. 1235. Her treatment note indicated that she

1 learned Plaintiff had obtained an opioid prescription from another provider who
2 was unaware of this restriction. Tr. 1235. ARNP Fusfield reported that she told
3 Plaintiff she would not give her narcotics anymore and she needed to follow the
4 directions of pain management. Tr. 1235. ARNP Fusfield noted that she offered
5 physical therapy to Plaintiff, “but she does not want that.” Tr. 1235. Defendant
6 argues that “[t]he ALJ reasonably concluded that this suggested drug-seeking
7 behavior because Plaintiff rejected [ARNP] Fusfield’s offer of physical therapy in
8 lieu of narcotics.” ECF No. 15 at 7. However, it is not clear from ARNP
9 Fusfield’s treatment note that Plaintiff refused physical therapy solely because she
10 wanted narcotics instead. There were no other instances in the record that
11 suggested Plaintiff was engaged in drug-seeking behavior. Further, the ALJ found
12 that this treatment note suggested only “possible” drug-seeking behavior. Tr. 602.
13 The ALJ’s finding that Plaintiff engaged in drug-seeking behavior is not supported
14 by the record. This error is harmless because the ALJ identified numerous
15 specific, clear, and convincing reasons to discount Plaintiff’s symptom claims. *See*
16 *Carmickle*, 533 F.3d at 1162-63; *Molina*, 674 F.3d at 1115 (“[S]everal of our cases
17 have held that an ALJ’s error was harmless where the ALJ provided one or more
18 invalid reasons for disbelieving a claimant’s testimony, but also provided valid
19 reasons that were supported by the record.”); *Batson v. Comm’r of Soc. Sec.*
20 *Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (holding that any error the ALJ

1 committed in asserting one impermissible reason for claimant's lack of credibility
2 did not negate the validity of the ALJ's ultimate conclusion that the claimant's
3 testimony was not credible).

4 *6. Noncompliance with Treatment*

5 The ALJ discounted Plaintiff's symptom claims because she was often
6 noncompliant with treatment prior to April 2015. Tr. 602-03. An unexplained, or
7 inadequately explained, failure to seek treatment or follow a prescribed course of
8 treatment may be considered when evaluating a claimant's subjective symptoms.

9 *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007). Evidence of a claimant's self-
10 limitation and lack of motivation to seek treatment are appropriate considerations
11 in determining the credibility of a claimant's subjective symptom reports.

12 *Osenbrock v. Apfel*, 240 F.3d 1157, 1165-66 (9th Cir. 2001). When there is no
13 evidence suggesting that the failure to seek or participate in treatment is

14 attributable to a mental impairment rather than a personal preference, it is

15 reasonable for the ALJ to conclude that the level or frequency of treatment is

16 inconsistent with the alleged severity of complaints. *Molina*, 674 F.3d at 1113-14.

17 But when the evidence suggests lack of mental health treatment is partly due to a

18 claimant's mental health condition, it may be inappropriate to consider a

19 claimant's lack of mental health treatment when evaluating the claimant's failure

20 to participate in treatment. *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996).

1 The ALJ noted that Plaintiff alleged she had chronic debilitating depression,
2 anxiety, and panic attacks that caused marked/severe cognitive, social, and mental
3 limitations. Tr. 603. However, the ALJ highlighted several instances in the record
4 that revealed Plaintiff was noncompliant with mental health treatment. Tr. 603;
5 *see, e.g.*, Tr. 1133 (July 8, 2014: Plaintiff’s mental health provider expressed
6 concerns about her irregular attendance); Tr. 1103 (November 25, 2014: Plaintiff’s
7 mental health provider noted she was showing a lack of commitment in her
8 treatment and not participating in sessions); Tr. 1093 (February 23, 2015: Plaintiff
9 told her mental health provider that she took medications, “when I remember,” and
10 her provider discussed with her the importance of compliance). The record also
11 reveals additional comments from Plaintiff’s mental health provider about her lack
12 of commitment to treatment. *See* Tr. 1137 (June 5, 2014: Plaintiff’s mental health
13 provider noted that Plaintiff “needs to continue to look at her commitment if she is
14 going to receive the full benefit from treatment”); Tr. 1135 (July 1, 2014:
15 Plaintiff’s mental health provider discussed Plaintiff’s commitment to treatment
16 and “how she is not fulfilling her obligation by missing so many group sessions”);
17 Tr. 1100 (February 4, 2015: “At this time [Plaintiff] has poor attendance and is not
18 following through with treatment recommendations for the past several months”).
19 Further, the ALJ noted that despite Plaintiff’s claims of debilitating back pain prior
20 to April 2015, Plaintiff was not fully compliant with treatment. Tr. 602. The ALJ

1 cited a March 2013 treatment note where ARNP Fusfield reported having referred
2 Plaintiff to physical therapy for her spine, but she was discharged from services
3 due to not showing up for three appointments. Tr. 602 (citing Tr. 1236).

4 Plaintiff does not challenge the ALJ's finding that she did not follow
5 through with treatment, but claims this is a direct symptom of her mental health
6 impairments. ECF No. 14 at 18. Specifically, Plaintiff contends that her "inability
7 to follow through with treatment is a testament to the debilitating anxiety that often
8 prevents her from even leaving her house." ECF No. 14 at 18 (citing Tr. 1082,
9 1088, 1211). The fact that she was not compliant with her mental health treatment
10 or with her physical therapy, despite the recommendations of her providers and her
11 ability to do so, supports the ALJ's conclusions regarding Plaintiff's assertion of
12 disabling symptoms of depression, anxiety, panic attacks, and back pain.

13 Alternatively, even if the failure to pursue physical therapy and mental health
14 treatment was related to Plaintiff's depression and anxiety, any error is harmless
15 because it does not invalidate the overall analysis of Plaintiff's symptoms. *See,*
16 *e.g., Batson*, 359 F.3d at 1197 (upholding ALJ's credibility determination even
17 though one reason may have been in error).

18 *7. Situational Stressors*

19 The ALJ found that Plaintiff's symptom testimony was attributable in part to
20 situational stressors rather than due solely to her medically determinable

1 impairments. Tr. 604. An ALJ may reasonably find a claimant's symptom
2 testimony less credible where the evidence "squarely support[s]" a finding that the
3 claimant's impairments are attributable to situational stressors rather than
4 impairments. *Wright v. Colvin*, No. 13-CV-3068-TOR, 2014 WL 3729142, at *5
5 (E.D. Wash. July 25, 2014) ("Plaintiff testified that she would likely be able to
6 maintain full-time employment but for the 'overwhelming' stress caused by caring
7 for her family members"). However, "because mental health conditions may
8 presumably *cause* strained personal relations or other life stressors, the Court is not
9 inclined to opine that one has caused the other based only on the fact that they
10 occur simultaneously." *Brendan J. G. v. Comm'r, Soc. Sec. Admin.*, No. 6:17-CV-
11 742-SI, 2018 WL 3090200, at *7 (D. Or. June 20, 2018) (emphasis in original).

12 The ALJ identified issues with Plaintiff's children (her son's health and her
13 daughter's pregnancy and substance abuse), Plaintiff's pain and health, finances,
14 loss of housing, and legal issues related to a car accident as situational stressors.
15 Tr. 604; *see, e.g.*, Tr. 1114 (September 2014: during a group therapy session,
16 Plaintiff had to step out several times to deal with stressors involving her son, who
17 was sick); Tr. 1118 (September 2014: at an appointment, Plaintiff revealed
18 stressors involving her daughter, whom she recently learned was pregnant and was
19 in and out of jail); Tr. 1106 (October 2014: Plaintiff complained of increased
20 symptoms after receiving an eviction notice); Tr. 1067 (February 2015: Plaintiff

1 endorsed suicidal ideation due to multiple stressors, including her health, pain,
2 finances, and daughter's substance abuse issues, though she asserted she would
3 never kill herself because of her children); Tr. 1084-85 (March 2015: Plaintiff
4 reported being stressed about an upcoming deposition related to a car accident).
5 Plaintiff's increased stress with issues of illness and substance abuse among her
6 children, and her physical pain from a car accident, may not be caused by
7 Plaintiff's impairments. However, Plaintiff's other stressors from child custody
8 issues, living arrangements, and finances are less clearly separable from Plaintiff's
9 mental impairments. Unlike prior cases in this district, where the record clearly
10 contained evidence that the claimant would have been capable of working but for
11 the presence of a specific situational stressor, here Plaintiff's impairments and
12 situational stressors are more complex and intertwined. *See Wright*, 2014 WL
13 3729142, at *5. The ALJ appeared to acknowledge that the evidence did not
14 squarely support a finding that Plaintiff's impairments were attributable to
15 situational stressors rather than her impairments, as she noted that Plaintiff's
16 symptoms were "at least in part" situational in nature. Tr. 604. This finding is not
17 supported by substantial evidence. However, this error is harmless because the
18 ALJ identified numerous specific, clear, and convincing reasons to discount
19 Plaintiff's symptom claims. *See Carmickle*, 533 F.3d at 1162-63; *Molina*, 674
20 F.3d at 1115; *Batson*, 359 F.3d at 1197.

1 **B. Medical Opinion Evidence**

2 Plaintiff challenges the ALJ’s evaluation of the medical opinions of Mara
3 Fusfield, ARNP, Charles Bulfinch, D.O., Roland Dougherty, Ph.D., and Derrick
4 Conley, M.S.W. ECF No. 14 at 11-17.

5 There are three types of physicians: “(1) those who treat the claimant
6 (treating physicians); (2) those who examine but do not treat the claimant
7 (examining physicians); and (3) those who neither examine nor treat the claimant
8 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”
9 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
10 Generally, a treating physician’s opinion carries more weight than an examining
11 physician’s opinion, and an examining physician’s opinion carries more weight
12 than a reviewing physician’s opinion. *Id.* at 1202. “In addition, the regulations
13 give more weight to opinions that are explained than to those that are not, and to
14 the opinions of specialists concerning matters relating to their specialty over that of
15 nonspecialists.” *Id.* (citations omitted).

16 If a treating or examining physician’s opinion is uncontradicted, the ALJ
17 may reject it only by offering “clear and convincing reasons that are supported by
18 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
19 “However, the ALJ need not accept the opinion of any physician, including a
20 treating physician, if that opinion is brief, conclusory, and inadequately supported

1 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
2 (9th Cir. 2011) (internal quotation marks and brackets omitted). “If a treating or
3 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
4 may only reject it by providing specific and legitimate reasons that are supported
5 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830–
6 31). The opinion of a nonexamining physician may serve as substantial evidence if
7 it is supported by other independent evidence in the record. *Andrews*, 53 F.3d at
8 1041.

9 “Only physicians and certain other qualified specialists are considered
10 ‘[a]cceptable medical sources.’ ” *Ghanim*, 763 F.3d at 1161 (alteration in original);
11 *see* 20 C.F.R. § 416.913 (2013).³ However, an ALJ is required to consider
12 evidence from non-acceptable medical sources. *Sprague v. Bowen*, 812 F.2d 1226,
13 1232 (9th Cir. 1987); 20 C.F.R. § 416.913(d) (2013). “Other sources” include
14 nurse practitioners, physicians’ assistants, therapists, teachers, social workers,
15 spouses and other non-medical sources. 20 C.F.R. § 20 C.F.R. § 416.913(d)
16
17

18 ³ For cases filed prior to March 27, 2017, the definition of an acceptable medical
19 source, as well as the requirement that an ALJ consider evidence from non-
20 acceptable medical sources, are located at 20 C.F.R. § 416.913(d) (2013).

1 (2013). An ALJ may reject the opinion of a non-acceptable medical source by
2 giving reasons germane to the opinion. *Ghanim*, 763 F.3d at 1161.

3 *1. Ms. Fusfield*

4 On June 5, 2012, Plaintiff's treating nurse, Mara Fusfield, ARNP, completed
5 an evaluation of Plaintiff. Tr. 416-18. She noted that Plaintiff had problems with
6 her back, neck, right arm, and leg. Tr. 416. ARNP Fusfield also indicated that
7 Plaintiff had depression. Tr. 416. She opined that Plaintiff could work "0" hours
8 per week and was limited to sedentary work. Tr. 416-17. The ALJ gave ARNP
9 Fusfield's opinion little weight. Tr. 607. Because ARNP Fusfield was an "other
10 source," the ALJ was required to provide germane reasons to discount her opinion.
11 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

12 a. "Other Source" Opinion

13 In discrediting her opinion, the ALJ noted that ARNP Fusfield was not an
14 acceptable medical source. Tr. 608. An ALJ must consider the testimony of lay
15 witnesses in determining whether a claimant is disabled. *Stout v. Comm'r of Soc.*
16 *Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006). Lay witness testimony cannot
17 establish the existence of medically determinable impairments, but lay witness
18 testimony is "competent evidence" as to "how an impairment affects [a claimant's]
19 ability to work." *Id.*; 20 C.F.R. § 416.913; *see also* *Dodrill*, 12 F.3d at 918-19
20 ("[F]riends and family members in a position to observe a claimant's symptoms

1 and daily activities are competent to testify as to her condition.”). If lay testimony
2 is rejected, the ALJ ““must give reasons that are germane to each witness.””
3 *Nguyen*, 100 F.3d at 1467 (citing *Dodrill*, 12 F.3d at 919). The fact that ARNP
4 Fusfield was not an acceptable medical source was not a germane reason to reject
5 her opinion.

6 However, the ALJ also noted that she gave greater weight to the opinions of
7 Guillermo Rubio, M.D., and Charles Nussbaum, M.D., who were both acceptable
8 medical sources. Tr. 608. The opinion of a nonexamining physician may serve as
9 substantial evidence if it is supported by other evidence in the record and is
10 consistent with it. *Andrews*, 53 F.3d at 1041. Other cases have upheld the
11 rejection of an examining or treating physician based in part on the testimony of a
12 nonexamining medical advisor when other reasons to reject the opinions of
13 examining and treating physicians exist independent of the nonexamining doctor’s
14 opinion. *Lester*, 81 F.3d at 831 (citing *Magallanes v. Bowen*, 881 F.2d 747, 751-
15 55 (9th Cir. 1989) (reliance on laboratory test results, contrary reports from
16 examining physicians and testimony from claimant that conflicted with treating
17 physician’s opinion)); *Roberts v. Shalala*, 66 F.3d 179, 184 (9th Cir. 1995)
18 (rejection of examining psychologist’s functional assessment which conflicted with
19 his own written report and test results). Thus, case law requires not only an
20 opinion from the consulting physician but also substantial evidence (more than a

1 mere scintilla but less than a preponderance), independent of that opinion which
2 supports the rejection of contrary conclusions by examining or treating physicians.
3 *Andrews*, 53 F.3d at 1039.

4 In October 2012, Dr. Rubio, a State agency medical consultant, reviewed the
5 medical record without updated records, and opined that Plaintiff could perform
6 light work with some postural and environmental restrictions. Tr. 75-89. The ALJ
7 gave Dr. Rubio's opinion significant weight. Tr. 607. The ALJ found that
8 although Dr. Rubio did not have the opportunity to review updated medical
9 records, his opinion was consistent with the longitudinal evidence during the
10 relevant period, including Plaintiff's workup findings and physical examinations.
11 Tr. 607. Plaintiff does not challenge the weight given to Dr. Rubio's opinion. As
12 discussed *supra*, the nonexamining opinion of Dr. Rubio was consistent with other
13 independent evidence in the record, and therefore, constituted substantial evidence
14 in support of the ALJ's decision to discredit the opinion of ARNP Fusfield.

15 In February 2015, Dr. Nussbaum, a spinal specialist and neurosurgeon,
16 examined Plaintiff and reviewed the results from a CT scan of Plaintiff's back and
17 an MRI of Plaintiff's neck. Tr. 1053. Dr. Nussbaum concluded there was no
18 objective evidence of radiculopathy in Plaintiff's neck and reported only age
19 appropriate changes. Tr. 1053. The ALJ assigned greater weight to the opinion of
20 Dr. Nussbaum than the opinion of ARNP Fusfield. Tr. 608. Plaintiff does not

1 challenge the weight given to Dr. Nussbaum's opinion. Dr. Nussbaum's opinion
2 constituted substantial evidence in support of the ALJ's decision to discount the
3 opinion of ARNP Fusfield. It was reasonable for the ALJ to accord greater weight
4 to the opinions of Dr. Rubio and Dr. Nussbaum than to ARNP Fusfield's opinion.

5 b. Inconsistent with Objective Medical Evidence

6 The ALJ discounted ARNP Fusfield's opinion because it was not supported
7 by the objective medical evidence. Tr. 607-08. Factors to evaluating a medical
8 opinion include the amount of relevant evidence that supports the opinion and the
9 consistency of the medical opinion with the record. *Lingenfelter v. Astrue*, 504
10 F.3d 1028, 1042 (9th Cir. 2007); *Orn*, 495 F.3d at 631; 20 C.F.R. § 416.927(c)(4).

11 A medical opinion may be rejected if it is unsupported by medical findings and
12 treatment notes. *Bray*, 554 F.3d at 1228; *Batson*, 359 F.3d at 1195; *Thomas*, 278
13 F.3d at 957; *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008); *Matney v.*
14 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992). The ALJ's decision to discount
15 ARNP Fusfield's opinion that Plaintiff could work "0" hours per week and was
16 limited to sedentary work is supported by substantial evidence. Tr. 607. For
17 example, a CT scan of Plaintiff's back revealed only mild findings, Tr. 1150; an
18 electromyogram of Plaintiff's left upper extremity was "mildly abnormal" and
19 showed no evidence of acute denervation, chronic denervation, or median or ulnar
20 neuropathy, Tr. 519-20; and Dr. Nussbaum reported that imaging showed Plaintiff

1 had age-appropriate findings in the cervical spine, Tr. 1053. Ms. Fusfield's
2 opinion was also inconsistent with longitudinal physical examinations prior to May
3 2015, showing normal gait as well as normal motor strength, normal range of
4 motion, normal reflexes, normal coordination, and normal sensation in the bilateral
5 upper and lower extremities. *See, e.g.*, Tr. 528, 530, 544, 1094, 1165, 1169, 1173,
6 1177, 1185, 1193. Plaintiff argues that the ALJ erred because the record
7 established a pattern of more severe objective findings that were consistent with
8 Ms. Fusfield's opinion. ECF No. 14 at 12. The Court must consider the ALJ's
9 decision in the context of "the entire record as a whole," and if the "evidence is
10 susceptible to more than one rational interpretation, the ALJ's decision should be
11 upheld." *Ryan*, 528 F.3d at 1198 (internal quotation marks omitted). Here, the
12 ALJ reasonably concluded that ARNP Fusfield's opinion that Plaintiff could not
13 work at all was inconsistent with the objective findings. This was a germane
14 reason to discount ARNP Fusfield's opinion.

15 c. Inconsistent with Activities

16 The ALJ found that ARNP Fusfield's opinion was inconsistent with
17 Plaintiff's activities during the relevant period. Tr. 607. An ALJ may discount a
18 medical source opinion to the extent it conflicts with the claimant's daily activities.
19 *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999). Here,
20 the ALJ observed that ARNP Fusfield concluded Plaintiff was unable to work at all

1 due to her back, neck, right arm, and leg problems. Tr. 607. ARNP Fusfield
2 opined that Plaintiff could comfortably sit for only 15 to 20 minutes. Tr. 416.
3 Further, she reported that Plaintiff “cannot sit long periods.” Tr. 416. However,
4 the ALJ observed that Plaintiff was able to travel alone to Lebanon, an activity that
5 would require her to stand in a security line and sit on an airplane for multiple
6 hours at a time. Tr. 600, 602, 607-08. The ALJ reasonably concluded that the
7 record documented activities that were inconsistent with ARNP Fusfield’s opinion
8 that Plaintiff was unable to work at all due in part to her problems with both sitting
9 and standing. This was a germane reason to discount ARNP Fusfield’s opinion.

10 d. Failure to Follow Treatment Recommendations

11 The ALJ determined that ARNP Fusfield’s opinion was inconsistent with
12 Plaintiff’s failure to follow treatment recommendations. Tr. 607. An ALJ may
13 discredit a claimant’s symptom complaints if the claimant fails to show good
14 reason for failing to follow treatment recommendations. *Smolen*, 80 F.3d at 1284.
15 However, the fact that a claimant fails to follow recommended treatment is not
16 directly relevant to the weight of a medical provider’s opinion. *See* 20 C.F.R. §
17 416.927(c). The ALJ determined that ARNP Fusfield’s assessment of severe
18 limitations was inconsistent with Plaintiff’s noncompliance with physical therapy
19 appointments which ARNP Fusfield had recommended. Tr. 607. Without further
20 explanation of how Plaintiff’s failure to follow treatment recommendations

1 specifically undermined ARNP Fusfield's medical opinions, this was not a
2 germane reason to discredit ARNP Fusfield's opinion. However, this error is
3 harmless because the ALJ provided other germane reasons to discredit ARNP
4 Fusfield's opinion. *See Parra v. Astrue*, 481 F.3d 747 (9th Cir. 2007).

5 e. Inconsistent with Treatment Notes

6 The ALJ discredited ARNP Fusfield's opinion because the severity of the
7 assessed limitations was inconsistent with her treatment notes. Tr. 608. A medical
8 opinion may be rejected if it is unsupported by medical findings and treatment
9 notes. *Bray*, 554 F.3d at 1228; *Batson*, 359 F.3d at 1195; *Thomas*, 278 F.3d at 957;
10 *Tommasetti*, 533 F.3d at 1041; *Matney*, 981 F.2d at 1019. On June 5, 2012, ARNP
11 Fusfield relied, in part, on Plaintiff's depression in concluding that Plaintiff would
12 be limited to working "0" hours per week. Tr. 416. However, her treatment notes
13 from the same day as her opinion indicated that Plaintiff had normal mood and
14 affect, full alertness/orientation, and no memory impairment. Tr. 501-02. Further,
15 her treatment notes from the month after her opinion showed that Plaintiff had
16 appropriate mood and affect, normal thought content, full alertness and orientation,
17 no problems with speech, articulation, abstract reasoning, memory, attention span,
18 or concentration, and appropriate judgment and insight. Tr. 500. The ALJ
19 reasonably concluded that ARNP Fusfield's contemporaneous treatment notes did
20

1 not support the level of impairment she opined as to Plaintiff's depression. Tr.
2 608. This was a germane reason for discounting ARNP Fusfield's opinion.

3 f. Relied on Plaintiff's Self-Reports

4 Finally, the ALJ discounted ARNP Fusfield's opinion because it appeared to
5 rely heavily on Plaintiff's subjective pain complaints and limitations. Tr. 608. A
6 physician's opinion may be rejected if it based on a claimant's properly discounted
7 complaints. *Tonapetyan*, 242 F.3d at 1149; *Morgan*, 169 F.3d at 602; *Fair*, 885
8 F.2d at 604. However, when an opinion is not more heavily based on a patient's
9 discounted self-reports than on clinical observations, there is no evidentiary basis
10 for rejecting the opinion. *Ghanim*, 763 F.3d at 1162; *Ryan*, 528 F.3d at 1199-1200.
11 As discussed *supra*, Plaintiff's symptom complaints were properly discounted and
12 Plaintiff failed to establish that the medical evidence of record, including ARNP
13 Fusfield's contemporaneous treatment notes, supported ARNP Fusfield's opinion
14 that Plaintiff was unable to work. This was a germane reason for discounting
15 ARNP Fusfield's opinion.

16 2. *Dr. Bulfinch*

17 On February 13, 2015, treating physician Charles Bulfinch, D.O. completed
18 an evaluation of Plaintiff. Tr. 1054-56. He opined that Plaintiff was severely
19 limited due to her lumbar and cervical spine conditions. Tr. 1054-56. Dr. Bulfinch
20 indicated that Plaintiff had severe loss of motion, severe limitations in her ability to

1 ambulate, and she was unable to tolerate carrying light loads or to sit or stand for
2 any extended time. Tr. 1054. Dr. Bulfinch opined that Plaintiff was limited to
3 working “0” hours per week. Tr. 1054. The ALJ gave Dr. Bulfinch’s opinion little
4 weight. Tr. 607. Because Dr. Bulfinch’s opinion was contradicted by the
5 nonexamining opinion of Dr. Rubio, Tr. 75-89, the ALJ was required to provide
6 specific and legitimate reasons for discounting Dr. Bulfinch’s opinion. *Bayliss*,
7 427 F.3d at 1216.

8 a. Inconsistent with Other Record Evidence

9 The ALJ discounted Dr. Bulfinch’s opinion because it was inconsistent with
10 other record evidence. Tr. 608. A medical opinion may be rejected if it is
11 unsupported by medical findings. *Bray*, 554 F.3d at 1228; *Batson*, 359 F.3d at
12 1195; *Thomas*, 278 F.3d at 957; *Tonapetyan*, 242 F.3d at 1149; *Matney*, 981 F.2d
13 at 1019. An ALJ may discredit physicians’ opinions that are unsupported by the
14 record as a whole. *Batson*, 359 F.3d at 1195. Moreover, an ALJ is not obligated to
15 credit medical opinions that are unsupported by the medical source’s own data
16 and/or contradicted by the opinions of other examining medical sources.
17 *Tommasetti*, 533 F.3d at 1041. The ALJ highlighted many notable inconsistencies
18 between Dr. Bulfinch’s opined limitations and the record evidence. Tr. 608; *see*,
19 *e.g.*, Tr. (1053-54, 1094 (Dr. Bulfinch found that Plaintiff’s “chronic muscle spasm
20 is so severe that it severely limits her range of motion and ability to ambulate,”

1 which contributed to his conclusion that Plaintiff was severely limited and unable
2 to work at all, but treatment notes from the same month as his opinion showed
3 Plaintiff had a normal, steady gait at two separate appointments); Tr. 1053-55 (Dr.
4 Bulfinch opined that Plaintiff was unable to lift, but a physical examination that
5 month showed intact sensation in her upper extremities); Tr. 530, 544, 1055, 1165,
6 1169, 1173, 1177, 1185, 1189, 1193, 1196 (Dr. Bulfinch found that Plaintiff was
7 severely limited, but other physical examinations prior to May 2015 regularly
8 showed normal motor strength, normal range of motion, normal reflexes, normal
9 coordination, and normal sensation in the bilateral upper and lower extremities);
10 Tr. 1054, 1150 (Dr. Bulfinch opined that Plaintiff's back and neck pain was
11 disabling, observing that "there really is no position of ease for her," and she was
12 "unable to sit or stand for extended or really even short periods of time," but the
13 record showed mild lumbar imaging findings); Tr. 1053-54 (Dr. Bulfinch found
14 that Plaintiff's back and neck pain was disabling, but spinal surgeon Dr. Nussbaum
15 reviewed Plaintiff's cervical MRI in February 2015, the same month as Dr.
16 Bulfinch's opinion, and noted age-appropriate degeneration with no severe
17 foraminal compromise, only some modest foraminal narrowing at C5-6, and no
18 objective evidence of cervical radiculopathy). Further, the ALJ determined that
19 Dr. Bulfinch's assessment of severe limitations would be consistent with signs of
20 atrophy, but noted that when Plaintiff was examined in February 2015, the same

1 month as Dr. Bulfinch's opinion, Plaintiff showed no signs of atrophy. Tr. 608
2 (citing Tr. 1053).

3 Plaintiff argues that, while there may have been a few instances in the record
4 with mild findings, there were numerous notations in the record of objective
5 evidence that supported Dr. Bulfinch's opinion. ECF No. 14 at 14-15. While the
6 record may support another reasonable interpretation, the ALJ's finding that Dr.
7 Bulfinch's extreme functional limitations were not supported by the imaging
8 results, MRI results, treatment notes, and physical examinations that overall
9 indicate mild conditions is a rational finding. *See Batson*, 359 F.3d at 1198
10 (recognizing that when the evidence in the record is subject to more than one
11 rational interpretation, the court defers to the ALJ's finding). This was a specific
12 and legitimate reason, supported by substantial evidence, to discount Dr.
13 Bulfinch's opinion.

14 b. Inconsistent with Activities

15 The ALJ found that Dr. Bulfinch's opinion was inconsistent with Plaintiff's
16 activities during the relevant period, specifically citing her travel to Lebanon. Tr.
17 608. An ALJ may discount a medical source opinion to the extent it conflicts with
18 the claimant's daily activities. *Morgan*, 169 F.3d at 601. Here, the ALJ observed
19 that Dr. Bulfinch opined Plaintiff was unable to work at all due to her back and
20 neck pain. Tr. 1054. Dr. Bulfinch stated that Plaintiff could "not tolerate sitting or

1 standing for any extended time,” and further observed that she was “unable to sit or
2 stand for extended or really even short periods of time.” Tr. 1054. However, the
3 ALJ observed that Plaintiff was able to travel alone to Lebanon, an activity that
4 would require her to stand in a security line and sit on an airplane for multiple
5 hours at a time. Tr. 600, 602, 607-08. The ALJ reasonably concluded that the
6 record documented activities that were inconsistent with Dr. Bulfinch’s opinion
7 that Plaintiff was unable to work at all due in part to her inability to sit or stand for
8 even short periods of time. This was a specific and legitimate reason, supported by
9 substantial evidence, to discount Dr. Bulfinch’s opinion.

10 c. Based on Self-Reports

11 The ALJ also discounted Dr. Bulfinch’s opinion because it appeared to rely
12 heavily on Plaintiff’s subjective pain complaints and limitations. Tr. 608. A
13 physician’s opinion may be rejected if it is based on a claimant’s properly
14 discounted complaints. *Tonapetyan*, 242 F.3d at 1149; *Morgan*, 169 F.3d at 602;
15 *Fair*, 885 F.2d at 604. However, when an opinion is not more heavily based on a
16 patient’s discounted self-reports than on clinical observations, there is no
17 evidentiary basis for rejecting the opinion. *Ghanim*, 763 F.3d at 1162; *Ryan*, 528
18 F.3d at 1199-1200. As discussed *supra*, Plaintiff’s symptom complaints were
19 properly discounted and Plaintiff failed to establish that the record evidence,
20 including treatment notes from the same month as Dr. Bulfinch’s opinion,

1 supported Dr. Bulfinch's opinion that Plaintiff was unable to work. This was a
2 specific and legitimate reason, supported by substantial evidence, to discount Dr.
3 Bulfinch's opinion.

4 *3. Dr. Dougherty*

5 On June 25, 2012, examining psychologist Roland Dougherty, Ph.D.
6 conducted a psychological evaluation of Plaintiff. Tr. 408-15. Dr. Dougherty
7 diagnosed Plaintiff with major depressive disorder, generalized anxiety disorder,
8 cognitive disorder not otherwise specified, PTSD, in partial remission, and
9 obsessive-compulsive traits. Tr. 408-15. Dr. Dougherty assigned Plaintiff a GAF
10 score of 45. Tr. 414. He indicated that Plaintiff could only do physical tasks for
11 short periods, her social skills were good, and she should be able to understand,
12 remember, and follow simple directions. Tr. 415.

13 The ALJ gave Dr. Dougherty's opinion partial weight. Tr. 609. The ALJ
14 did not fully adopt Dr. Dougherty's assessment of Plaintiff's cognitive functioning,
15 nor did she adopt Dr. Dougherty's assessment of Plaintiff's physical functioning or
16 the assigned GAF score. Tr. 609-10. Because Dr. Dougherty's opinion was
17 contradicted by the nonexamining opinion of Dr. Underwood, Tr. 82, the ALJ was
18 required to provide specific and legitimate reasons for discounting Dr. Dougherty's
19 opinion. *Bayliss*, 427 F.3d at 1216.

1 a. Global Assessment Functioning (GAF)

2 The ALJ discounted Dr. Dougherty's assigned GAF score of 45, finding that
3 it relied in part on Plaintiff's self-report and on conditions that were not medically
4 established. Tr. 609-10. While a GAF score may help guide an ALJ's decision, an
5 ALJ is not bound to consider a GAF score.⁴ The Commissioner has explicitly
6 disavowed use of GAF scores as indicators of disability. 65 Fed. Reg. 50746-01,
7 50764-65 (Aug. 21, 2000) ("The GAF scale . . . does not have a direct correlation
8 to the severity requirements in our mental disorder listing."). The GAF scale is no
9 longer included in the DSM-V. *See* Am. Psychiatric Ass'n, *Diagnostic &*
10 *Statistical Manual of Mental Disorders* at 16 (5th ed. 2013) ("It was recommended
11 that the GAF be dropped from the DSM-V for several reasons, including its
12 conceptual lack of clarity (i.e., including symptoms, suicide risk and disabilities in
13 its descriptors) and (questionable psychometrics in routine practice.")).

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15
16 ⁴ The GAF Scale measures "the clinician's judgment of the individual's overall
17 level of functioning" as to "psychological, social, and occupational functioning,"
18 but not "impairment in functioning due to physical (or environmental) limitations."
19 Am. Psychiatric Ass'n, *Diagnostic & Statistical Manual of Mental Disorders*, at 32
20 (4th ed. Text Revision 2000); *see Morgan*, 169 F.3d at 598, n.1.

1 Plaintiff argues that the ALJ's reason for rejecting the GAF score was not
2 valid because this fails to give proper deference to a medical provider. ECF No. 14
3 at 15. However, the ALJ explained that the GAF scores represent only snapshots
4 of Plaintiff's functioning for a particular moment in time, they are not equivalent to
5 a narrative statement of Plaintiff's functioning, they consider secondary factors,
6 such as limited finances and unemployment, that are irrelevant to the disability
7 determination, and they rely heavily on Plaintiff's self-report, which the ALJ found
8 was not fully credible. Tr. 610-11. Finding that Dr. Dougherty's assigned GAF
9 score was based in part on Plaintiff's properly rejected self-report was a specific
10 and legitimate reason to discredit Dr. Dougherty's opinion about Plaintiff's GAF
11 score.

12 b. Symptom Exaggeration/Poor Effort

13 The ALJ found that Dr. Dougherty's opinion about Plaintiff's cognitive
14 functioning was based on test results where Plaintiff did not give a full effort in
15 testing. Tr. 610. Evidence that a claimant exaggerated her symptoms is a clear
16 and convincing reason to reject the doctor's conclusions. *Thomas*, 278 F.3d at 958.
17 Plaintiff argues that the ALJ's reason for discrediting Dr. Dougherty's cognitive
18 functioning opinion was not valid because evaluating psychologist Emma Joan
19 Billings, Ph.D., noted that poor cognitive testing results may have been due to
20 Plaintiff experiencing cognitive decline associated with Parkinson's disease. ECF

1 No. 14 at 15-16 (citing Tr. 1211). However, as argued by Defendant, the ALJ
2 directly addressed this point by noting that Dr. Billings said Plaintiff's cognitive
3 disorder might only "possibly" be due to Parkinson disease. ECF No. 15 at 16
4 (citing Tr. 598, 1210). Further, Dr. Billings asserted her theory that Plaintiff's
5 poor cognitive test performance might be due to the onset of Parkinson's disease in
6 October 2015, six months beyond the period at issue in this case. Tr. 1210. As
7 discussed *supra*, the ALJ reasonably found that Plaintiff exaggerated her mental
8 symptom allegations. Tr. 605-06. Further, the ALJ noted that Dr. Dougherty
9 diagnosed rule-out symptom exaggeration in June 2012, Tr. 414, and after
10 reviewing Dr. Dougherty's evaluation, Dr. Gilbert and Dr. Underwood noted
11 Plaintiff gave out on mental status tasks and opined that such results were
12 indicative of suboptimal effort and symptom exaggeration, Tr. 65, 82. The ALJ
13 reasonably concluded that Dr. Dougherty's opinion was entitled to partial weight
14 because it was based on Plaintiff's poor effort during testing. Tr. 610. This was a
15 specific and legitimate reason to discredit Dr. Dougherty's opinion.

16 *4. Mr. Conley*

17 On December 27, 2013, treating social worker Derrick Conley, M.S.W.,
18 opined that Plaintiff could work "0" hours per week due to depression, panic
19 disorder, and borderline personality disorder. Tr. 589-91. The ALJ gave Mr.
20 Conley's opinion little weight. Tr. 610. Because Mr. Conley was an "other

1 source,” the ALJ was required to provide germane reasons to discount his opinion.
2 *Dodrill*, 12 F.3d at 918.

3 a. “Other Source” Opinion

4 In discrediting his opinion, the ALJ noted that Mr. Conley was not an
5 acceptable medical source. Tr. 610. An ALJ must consider the testimony of lay
6 witnesses in determining whether a claimant is disabled. *Stout*, 454 F.3d at 1053.
7 Lay witness testimony cannot establish the existence of medically determinable
8 impairments, but lay witness testimony is “competent evidence” as to “how an
9 impairment affects [a claimant’s] ability to work.” *Id.*; 20 C.F.R. § 416.913; *see*
10 *also Dodrill*, 12 F.3d at 918-19 (“[F]riends and family members in a position to
11 observe a claimant’s symptoms and daily activities are competent to testify as to
12 her condition.”). If lay testimony is rejected, the ALJ ““must give reasons that are
13 germane to each witness.”” *Nguyen*, 100 F.3d at 1467 (citing *Dodrill*, 12 F.3d at
14 919). The fact that Mr. Conley was not an acceptable medical source was not a
15 germane reason to reject his opinion.

16 However, the ALJ also noted that she gave greater weight to the opinions of
17 Dr. Dougherty, John Gilbert, Ph.D., and Sharon Underwood, Ph.D., who were all
18 acceptable medical sources. Tr. 610. The opinion of a nonexamining physician
19 may serve as substantial evidence if it is supported by other evidence in the record
20 and is consistent with it. *Andrews*, 53 F.3d at 1041. Case law requires not only an

1 opinion from the consulting physician but also substantial evidence (more than a
2 mere scintilla but less than a preponderance), independent of that opinion which
3 supports the rejection of contrary conclusions by examining or treating physicians.
4 *Andrews*, 53 F.3d at 1039.

5 In June and October 2012, Drs. Gilbert and Underwood, State agency
6 psychologists, reviewed the medical record without updated records, and opined
7 that Plaintiff could perform at least simple work tasks and could likely perform
8 detailed tasks. Tr. 69, 86. Both psychologists opined that Plaintiff's attention and
9 concentration deficits would not affect her ability to work 40 hours per week, she
10 could have superficial interactions with coworkers and supervisors and limited
11 interaction with the public, and she would work best in a job with a predictable
12 environment. Tr. 69-70, 86-87. The ALJ gave significant weight to the opinions
13 of Drs. Gilbert and Underwood. Tr. 609. The ALJ found that although Drs.
14 Gilbert and Underwood did not have the opportunity to review updated medical
15 records, their opinions were consistent with the longitudinal evidence during the
16 period at issue. Tr. 609. Plaintiff does not challenge the weight given to the
17 opinions of Drs. Gilbert and Underwood. As discussed *supra*, the nonexamining
18 opinions of Drs. Gilbert and Underwood were consistent with other independent
19 evidence in the record, and therefore, constituted substantial evidence in support of
20 the ALJ's decision to discredit the opinion of Mr. Conley. It was reasonable for

1 the ALJ to give more weight to the opinions of Drs. Gilbert and Underwood than
2 to the opinion of Mr. Conley.

3 b. Inconsistent with Treatment Notes

4 The ALJ determined that Mr. Conley's opinion of marked/severe mental
5 limitations was out of proportion to the treatment notes in the record. A medical
6 opinion may be rejected if it is unsupported by medical findings and treatment
7 notes. *Bray*, 554 F.3d at 1228; *Batson*, 359 F.3d at 1195; *Thomas*, 278 F.3d at 957;
8 *Tommasetti*, 533 F.3d at 1041; *Matney*, 981 F.2d at 1019. The ALJ noted that
9 treatment notes in the record regularly showed that Plaintiff was cooperative and
10 pleasant, in no acute distress, and exhibited intact memory, cognition, attention,
11 alertness and orientation, and fund of knowledge during appointments. Tr. 610,
12 *see, e.g.*, Tr. 528, 532-33 (pleasant and cooperative with examination); Tr. 1169,
13 1173, 1177, 1185, 1189, 1193, 1196 (cooperative, not in acute distress, oriented to
14 time, place, purpose, and person, grossly intact neuro exam); Tr. 1233, 1237, 1242
15 (cooperative and pleasant, not in acute distress); Tr. 1236 (cooperative, talkative).
16 Plaintiff asserts that, while there were some normal mental status findings, the
17 record also established a pattern of abnormal mental status findings, poor memory
18 and concentration, decreased cognition and extreme findings such as suicidal
19 ideation. ECF No. 14 at 16. The Court must consider the ALJ's decision in the
20 context of "the entire record as a whole," and if the "evidence is susceptible to

1 more than one rational interpretation, the ALJ's decision should be upheld." *Ryan*,
2 528 F.3d at 1198 (internal quotation marks omitted). Here, the ALJ reasonably
3 concluded that Mr. Conley's opinion that Plaintiff could not work at all was
4 inconsistent with treatment notes in the record. This was a germane reason to
5 discredit Mr. Conley's opinion.

6 c. Inconsistent with Activities

7 The ALJ found that Mr. Conley's opinion was inconsistent with Plaintiff's
8 activities. Tr. 610. An ALJ may discount a medical source opinion to the extent it
9 conflicts with the claimant's daily activities. *Morgan*, 169 F.3d at 601. Here, the
10 ALJ observed that Mr. Conley opined Plaintiff was unable to work at all due to
11 depression, panic disorder, and borderline personality disorder. Tr. 610. However,
12 the ALJ also observed that Plaintiff was able to travel alone to Lebanon, an activity
13 that would require her to check in at the airport, stand in a security line, and sit on
14 an airplane with strangers surrounding her for many hours. Tr. 600, 602, 607-08.
15 The ALJ also noted that Plaintiff obtained a 3.3 grade point average from online
16 college classes and was a single parent to two teenage children, including one who
17 was dealing with legal and substance abuse issues during the relevant period. Tr.
18 610. The ALJ reasonably concluded that the record documented activities that
19 were inconsistent with Mr. Conley's opinion that Plaintiff was unable to work at
20

1 all due in part to her depression, panic disorder, and borderline personality
2 disorder. This was a germane reason to discredit Mr. Conley's opinion.

3 d. Based on Self-Reports

4 The ALJ also concluded that Mr. Conley's opinion appeared to rely heavily
5 on Plaintiff's self-reports of severe depression, anxiety, and suicidal ideation. Tr.
6 610. A physician's opinion may be rejected if it based on a claimant's properly
7 discounted complaints. *Tonapetyan*, 242 F.3d at 1149; *Morgan*, 169 F.3d at 602;
8 *Fair*, 885 F.2d at 604. However, when an opinion is not more heavily based on a
9 patient's discounted self-reports than on clinical observations, there is no
10 evidentiary basis for rejecting the opinion. *Ghanim*, 763 F.3d at 1162; *Ryan*, 528
11 F.3d at 1199-1200. As discussed *supra*, Plaintiff's symptom complaints were
12 properly discounted and Plaintiff failed to establish that the record evidence
13 supported Mr. Conley's opinion that Plaintiff was unable to work due to her mental
14 impairments. This was a germane reason to discredit Mr. Conley's opinion.

15 **C. Step Five**

16 Plaintiff contends the ALJ's step five finding regarding Plaintiff's ability to
17 perform work is not supported by substantial evidence because the testimony from
18 the vocational expert was based on an improper hypothetical. ECF No. 14 at 19-
19 20. The ALJ's hypothetical must be based on medical assumptions supported by
20 substantial evidence in the record that reflects all of the claimant's limitations.

1 *Osenbrock v. Apfel*, 240 F.3d 1157, 1165 (9th Cir. 2001). The hypothetical should
2 be “accurate, detailed, and supported by the medical record.” *Tackett*, 180 F.3d at
3 1101. The ALJ is not bound to accept as true the restrictions presented in a
4 hypothetical question propounded by a claimant’s counsel. *Magallanes*, 881 F.2d
5 at 756-57; *Martinez v. Heckler*, 807 F.2d 771, 773 (9th Cir. 1986). The ALJ is free
6 to accept or reject these restrictions as long as they are supported by substantial
7 evidence, even when there is conflicting medical evidence. *Id.* Plaintiff’s
8 argument assumes the ALJ erred in evaluating the medical opinion evidence and
9 Plaintiff’s symptom testimony. ECF No. 14 at 19-20. For reasons discussed
10 throughout this decision, the ALJ’s hypothetical to the vocational expert was based
11 on the evidence and reasonably reflects Plaintiff’s limitations. Thus, the ALJ’s
12 findings are supported by substantial evidence and are legally sufficient.

13 CONCLUSION

14 Having reviewed the record and the ALJ’s findings, the Court concludes the
15 ALJ’s decision is supported by substantial evidence and free of harmful legal error.
16 Accordingly, **IT IS HEREBY ORDERED:**

- 17 1. The District Court Executive is directed to **substitute Andrew M. Saul**
18 **as the Defendant and update the docket sheet.**
- 19 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.

1 3. Defendant's Motion for Summary Judgment, **ECF No. 15**, is

2 **GRANTED.**

3 4. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

4 The District Court Executive is directed to file this Order, provide copies to
5 counsel, and **CLOSE THE FILE.**

6 DATED August 12, 2019.

7 *s/Mary K. Dimke*

8 MARY K. DIMKE

9 UNITED STATES MAGISTRATE JUDGE
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